

**J.A., Appellant**

**U.S. POSTAL SERVICE, POST OFFICE,  
South Hack, NJ, Employer**

### Case Submitted on the Record

<sup>3</sup> The Board notes that following the December 22, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*"

## **ISSUE**

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include additional right shoulder conditions causally related to the accepted January 23, 2017 employment injury.

## **FACTUAL HISTORY**

On February 13, 2017 appellant, then a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, while unloading a trailer at work on January 23, 2017, he injured his shoulder when pulling a bulk mail container (BMC), which was stuck.<sup>4</sup> He did not stop work. OWCP accepted the claim for right shoulder strain.

In a February 13, 2017 attending physician's report (Form CA-20), Dr. Luningning Gatchalian, a Board-certified family practitioner, noted the January 23, 2017 employment injury and diagnosed right shoulder impingement. She opined that the diagnosed condition was caused or aggravated by appellant's employment activity, since his pain began at work. In a February 13, 2017 duty status report (Form CA-17), Dr. Gatchalian diagnosed right shoulder pain and provided work restrictions.

February 13, 2017 x-rays of appellant's right shoulder indicated mild degenerative changes of the acromioclavicular (AC) joint and mild subchondral cyst formation at the humeral head.

In a February 28, 2017 development letter, OWCP advised appellant of the deficiencies in his claim. It requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested information.

In a February 20, 2017 follow-up report, Dr. Gatchalian diagnosed right shoulder tendinitis from the January 23, 2017 employment injury. In a February 24, 2017 duty status report (Form CA-17), she diagnosed right shoulder sprain.

A February 26, 2017 right shoulder magnetic resonance imaging (MRI) scan indicated moderate supraspinatus tendinosis with minimal partial thickness tearing; moderate infraspinatus tendinosis with mild bursal surface fraying; disproportionate moderate edema in the distal clavicle seen in early post-traumatic osteolysis and tearing of the anterosuperior labrum and mild frayed and blunted posterior superior labrum.

In a February 27, 2017 report, Dr. Gatchalian referred appellant to an orthopedist for right shoulder pain. In a February 27, 2017 attending physician's report (Form CA-20), she diagnosed right shoulder tendinitis/labral tear which she opined was caused or aggravated by the January 23, 2017 employment injury because appellant's pain began at work.

In a March 16, 2017 report, Dr. Stephen G. Silver, a Board-certified orthopedic surgeon, noted the history of appellant's January 23, 2017 employment injury. He related that appellant reported continued pain and difficulty working light duty. Dr. Silver noted examination findings and provided an assessment of significant rotator cuff tear, labral tear, biceps anchor tear, and a

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<sup>4</sup> While the CA-1 form indicated a left shoulder injury, the evidence reflects that appellant was claiming right shoulder conditions.

large bone spur with significant edema of the AC joint. He opined that given appellant's line of work and the diagnosed tears, appellant was a candidate for arthroscopy of the shoulder. OWCP received an authorization request for the planned right shoulder arthroscopy.

OWCP received medical progress notes dated February 13 through 27, 2017 signed by Dr. Gatchalian which contained diagnoses of right shoulder tendinitis, right shoulder pain, and right shoulder sprain.

A Form CA-110 memorandum documents that OWCP returned a telephone call from appellant to advise that the case was accepted for right shoulder sprain, and that the claim would be further reviewed to determine whether additional conditions should be accepted.

By decision dated April 3, 2017, OWCP denied the claim for the additional diagnosed conditions of right shoulder impingement, labral tear, right shoulder tendinitis, internal derangement of right shoulder, rotator cuff tear, biceps anchor tear, and large bone spur with significant edema of the AC joint. It found that the medical evidence of record was insufficient to establish that those additional diagnosed right shoulder conditions were causally related to the accepted January 23, 2017 employment incident.

On April 24, 2017 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. The hearing was held telephonically on October 11, 2017. Appellant confirmed that he had injured his right shoulder while attempting to pull a BMC which was stuck. He indicated that he sought medical treatment two weeks later as his pain had worsened. Appellant stated that he had rotator cuff surgery in July 2017 and that he had not returned to work due to continued pain. Counsel argued that Drs. Silver and Vazquez had concluded that appellant sustained a rotator cuff tear at the time of the employment incident because he would not have been able to function with the tear injury, therefore, the tear resulted from the accepted employment incident.

In an April 18, 2017 report, Dr. Silver indicated that appellant continued to have pain at the AC joint in the bicipital groove and that his examination was unchanged. He opined that appellant sustained a work-related injury. Dr. Silver noted that appellant never had a shoulder problem before the January 23, 2017 employment incident and that his pain was the result of the injury at work pulling/lifting the heavy container. He further noted that appellant's examination and MRI scan were consistent with a torn labrum and a bone bruise at the AC joint. Dr. Silver explained that appellant had to do heavy labor in his line of work and that his pain and injury seen on the MRI scan were related to the work-related incident.

In a June 27, 2017 report, Dr. Oscar Vazquez, a Board-certified orthopedic surgeon, indicated that appellant was under his care for right shoulder pain, sprain of right rotator cuff capsule, adhesive capsulitis of right shoulder, and bicipital tendinitis of right shoulder. He advised that appellant was scheduled for surgery and would require a minimum of three months to recover. On July 13, 2017 Dr. Vazquez performed right shoulder arthroscopic rotator cuff repair, right shoulder arthroscopic biceps tenodesis, right shoulder arthroscopic subacromial decompression, and right shoulder arthroscopic distal clavicle resection.

By decision dated December 22, 2017, an OWCP hearing representative affirmed OWCP's April 3, 2017 decision. The hearing representative found that there was insufficient medical evidence of record to establish causal relationship as the examining physicians had failed to offer

a rationalized explanation of how and why the accepted employment injury caused or contributed to the additional diagnosed conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability for which compensation is claimed is causally related to the employment injury.<sup>6</sup>

If an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>7</sup> To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such causal relationship.<sup>8</sup>

The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>10</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish that his claim should be expanded to include additional right shoulder conditions causally related to his January 23, 2017 employment injury.

Appellant initially saw Dr. Gatchalian, who noted the history of appellant's January 23, 2017 employment incident. In a February 13, 2017 duty status report (Form CA-17), Dr. Gatchalian diagnosed right shoulder pain. However, pain and/or discomfort is only considered a symptom, not a medical diagnosis.<sup>11</sup> In her February 13 and 27, 2017 attending physician's

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009). *See also J.T.*, Docket No. 17-0578 (issued December 6, 2017).

<sup>7</sup> *See V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>8</sup> *See M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>9</sup> *See John W. Montoya*, 54 ECAB 306 (2003).

<sup>10</sup> *See H.H.*, Docket No. 16-0897 (issued September 21, 2016); *James Mack*, 43 ECAB 321 (1991).

<sup>11</sup> Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

reports (Form CA-20), Dr. Gatchalian diagnosed right shoulder impingement which she opined was caused or aggravated by appellant's employment activity because the pain began at work. An explanation that the pain started at work is a recitation of history rather than a rationalized medical opinion on causal relationship.<sup>12</sup> This report is of limited probative value regarding causal relationship as Dr. Gatchalian did not provide medical rationale explaining how the right shoulder impingement was related to the accepted employment activity.<sup>13</sup> In a February 20, 2017 follow-up report, Dr. Gatchalian diagnosed right shoulder tendinitis, but failed to provide medical rationale explaining how the right shoulder tendinitis was causally related to the accepted employment activity.<sup>14</sup>

In his March 16, 2017 report, Dr. Silver noted the history of the January 23, 2017 employment incident, appellant's reports of continued pain, and difficulty working light duty. He provided an assessment of significant rotator cuff tear, labral tear, biceps anchor tear, and a large bone spur with significant edema of the AC joint. While Dr. Silver opined that appellant was a candidate for arthroscopy of the shoulder due to his line of work and the diagnosed tears, he did not specifically address the cause of appellant's diagnosed conditions.<sup>15</sup>

In his April 18, 2017 report, Dr. Silver opined that appellant had sustained a work-related injury. He noted that appellant never had a shoulder problem before the January 23, 2017 employment injury and that his pain was a result of the injury at work pulling/lifting the heavy container. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury, without adequate rationale, is insufficient to establish causal relationship.<sup>16</sup> While Dr. Silver explained that appellant's examination and MRI scan were consistent with a torn labrum, a bone bruise at the AC joint, and that appellant did heavy labor in his line of work, he failed to explain how physiologically the movements involved in the January 23, 2017 employment incident caused or contributed to the diagnosed conditions. As such his opinion on causal relationship is of limited probative value.<sup>17</sup>

Dr. Vazquez treated appellant for right shoulder pain, sprain of right rotator cuff capsule, adhesive capsulitis of right shoulder, and bicipital tendinitis of right shoulder. He also performed right shoulder arthroscopic rotator cuff repair, right shoulder arthroscopic biceps tenodesis, right shoulder arthroscopic subacromial decompression, and right shoulder arthroscopic distal clavicle resection. However, Dr. Vazquez's reports are of limited probative value regarding causal relationship as he does not address the cause of the diagnosed conditions.<sup>18</sup>

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<sup>12</sup> See *Cora M. Haywood*, Docket No. 05-0087 (issued April 6, 2005).

<sup>13</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

<sup>14</sup> *Id.*

<sup>15</sup> See *Jaja K. Asaramo*, *supra* note 7.

<sup>16</sup> *M.R.*, Docket No. 14-0011 (issued August 27, 2014).

<sup>17</sup> *Id.*

<sup>18</sup> See *Jaja K. Asaramo*, *supra* note 7.

OWCP also received a February 13, 2017 x-ray report and a February 26, 2017 right shoulder MRI scan. However, diagnostic studies are of limited probative value as they do not address whether the employment injury caused the diagnosed conditions.<sup>19</sup>

The Board finds that appellant has not met his burden of proof because the medical opinion evidence of record is insufficient to establish the critical element of causal relationship between appellant's additional diagnosed conditions and the accepted employment injury.<sup>20</sup>

On appeal counsel argues that Dr. Silver's reports of March 16 and April 18, 2017 described how the tears in appellant's right shoulder were caused by pulling the 200-pound container. He referred to appellant's description of the injury, wherein appellant stated that his shoulder jerked while pulling the container and he felt a sudden, sharp pain. Counsel concluded that "due to the force he exerted in pulling the container, he jerked his right shoulder and suffered internal damage." His statement is insufficient to establish causal relationship as lay persons are not competent to render medical opinions.<sup>21</sup> As noted, causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>22</sup> The Board has held that the mere fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship. Temporal relationship alone will not suffice.<sup>23</sup> Appellant's personal belief that his employment activities either caused or contributed to his condition is insufficient, by itself, to establish causal relationship.<sup>24</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional right shoulder conditions causally related to the accepted January 23, 2017 employment incident.

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<sup>19</sup> See *R.S.*, Docket No. 17-1139 (issued November 16, 2017); *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

<sup>20</sup> See *T.F.*, Docket No. 17-0645 (issued August 15, 2018); see also *G.M.*, Docket No. 16-1764 (issued March 16, 2018).

<sup>21</sup> *James A. Long*, 10 ECAB 538 (1989).

<sup>22</sup> See *S.C.*, Docket No. 16-0002 (issued November 25, 2015).

<sup>23</sup> *Id.*

<sup>24</sup> See *D.I.*, 59 ECAB 158, 162 (2007); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 22, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 31, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board